

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ALPHONSE JOHN PRITCHARD,	:	CIVIL ACTION
Petitioner	:	
	:	
vs.	:	NO. 13-5406
	:	
JOHN E. WETZEL, Secretary	:	
PA Dept. of Corrections, et al.,	:	
Respondents	:	

ORDER

AND NOW, this 16th day of January, 2014, upon careful and independent consideration of the petition for writ of *habeas corpus*, and after review of the thorough and well-reasoned Report and Recommendation of United States Magistrate Judge David R. Strawbridge, IT IS HEREBY ORDERED that:

1. The petitioner's objections are OVERRULED following a *de novo* review.¹
2. The Report and Recommendation is APPROVED and ADOPTED.
3. The petition for writ of *habeas corpus* is DISMISSED with prejudice.

¹ In his objections to Judge Strawbridge's Report and Recommendation, the petitioner insists that his claim for relief is one of "first impression" for the court. See Document #6. He cries "foul" at the Supreme Court's decision, see *Miller v. Alabama*, 132 S.Ct. 2455 (2012), to treat juveniles and adults differently especially when the two groups were previously of one class and sentenced under one law of death or life without parole. He argues that the decision is a violation of equal protection to the other half of the "one class," and that he also should receive the benefit of the *Miller* decision. When the petitioner was convicted of first degree murder and sentenced to life without parole in the late seventies, he was twenty-six years old, far from a juvenile. Following the Court's decision in *Miller*, the petitioner filed a PCRA raising a *Miller* claim which is still pending in the Court of Common Pleas of Delaware County. Thus, his claim here is unexhausted. I must agree with Judge Strawbridge, however, that the petitioner's claim is also plainly meritless and cannot justify a stay of proceedings, as it is not based upon the law as set forth in *Miller* which applies to juveniles, but rather upon an argument that the law should be extended to adults. Accordingly, I will approve and adopt the Report and Recommendation and dismiss this petition with prejudice.

4. The petitioner's motion to stay proceedings (Document #4) is DENIED.

5. A certificate of appealability shall not issue because the petitioner has neither made a substantial showing of the denial of a constitutional right nor demonstrated that reasonable jurists would debate the correctness of the procedural aspects of this ruling. See 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 484 (2000).

6. The Clerk of Court is directed to mark this case CLOSED for all purposes.

BY THE COURT:

/s/ Lawrence F. Stengel
LAWRENCE F. STENGEL, J.